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NOTICE OF ALLOWANCE AND FEE(S) DUE

7590

01/31/2003

CONNOLLY & HUTZ
PO BOX 2207
WILMINGTON, DE 198992207

EXAMINER

KRUSE, DAVID H

ART UNIT

CLASS-SUBCLASS

1638

800-300000

DATE MAILED: 01/31/2003

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
08/945,144	01/20/1998	MICHEL LEBRUN	RP/PCT	2339

TITLE OF INVENTION: MUTATED 5-ENOL PYRUVYLSHIKIMATE-3-PHOSPHATE SYNTHASE, GENE CODING FOR SAID PROTEIN AND TRANSFORMED PLANTS CONTAINING SAID GENE

APPLN. TYPE	SMALL ENTITY	ISSUE FEE	PUBLICATION FEE	TOTAL FEE(S) DUE	DATE DUE
nonprovisional	NO	\$1300	\$0	\$1300	04/30/2003

THE APPLICATION IDENTIFIED ABOVE HAS BEEN EXAMINED AND IS ALLOWED FOR ISSUANCE AS A PATENT. **PROSECUTION ON THE MERITS IS CLOSED.** THIS NOTICE OF ALLOWANCE IS NOT A GRANT OF PATENT RIGHTS. THIS APPLICATION IS SUBJECT TO WITHDRAWAL FROM ISSUE AT THE INITIATIVE OF THE OFFICE OR UPON PETITION BY THE APPLICANT. SEE 37 CFR 1.313 AND MPEP 1308.

THE ISSUE FEE AND PUBLICATION FEE (IF REQUIRED) MUST BE PAID WITHIN THREE MONTHS FROM THE MAILING DATE OF THIS NOTICE OR THIS APPLICATION SHALL BE REGARDED AS ABANDONED. THIS STATUTORY PERIOD CANNOT BE EXTENDED. SEE 35 U.S.C. 151. THE ISSUE FEE DUE INDICATED ABOVE REFLECTS A CREDIT FOR ANY PREVIOUSLY PAID ISSUE FEE APPLIED IN THIS APPLICATION. THE PTOL-85B (OR AN EQUIVALENT) MUST BE RETURNED WITHIN THIS PERIOD EVEN IF NO FEE IS DUE OR THE APPLICATION WILL BE REGARDED AS ABANDONED.

HOW TO REPLY TO THIS NOTICE:

I. Review the SMALL ENTITY status shown above.

If the SMALL ENTITY is shown as YES, verify your current SMALL ENTITY status:

- A. If the status is the same, pay the TOTAL FEE(S) DUE shown above.
- B. If the status is changed, pay the PUBLICATION FEE (if required) and twice the amount of the ISSUE FEE shown above and notify the United States Patent and Trademark Office of the change in status, or

If the SMALL ENTITY is shown as NO:

- A. Pay TOTAL FEE(S) DUE shown above, or
- B. If applicant claimed SMALL ENTITY status before, or is now claiming SMALL ENTITY status, check the box below and enclose the PUBLICATION FEE and 1/2 the ISSUE FEE shown above.
- ☐ Applicant claims SMALL ENTITY status.
See 37 CFR 1.27.

II. PART B - FEE(S) TRANSMITTAL should be completed and returned to the United States Patent and Trademark Office (USPTO) with your ISSUE FEE and PUBLICATION FEE (if required). Even if the fee(s) have already been paid, Part B - Fee(s) Transmittal should be completed and returned. If you are charging the fee(s) to your deposit account, section "4b" of Part B - Fee(s) Transmittal should be completed and an extra copy of the form should be submitted.

III. All communications regarding this application must give the application number. Please direct all communications prior to issuance to Box ISSUE FEE unless advised to the contrary.

IMPORTANT REMINDER: Utility patents issuing on applications filed on or after Dec. 12, 1980 may require payment of maintenance fees. It is patentee's responsibility to ensure timely payment of maintenance fees when due.

PART B - FEE(S) TRANSMITTAL

Complete and send this form, together with applicable fee(s), to: **Mail** **Box ISSUE FEE**
Commissioner for Patents
Washington, D.C. 20231
Fax **(703)746-4000**

INSTRUCTIONS: This form should be used for transmitting the ISSUE FEE and PUBLICATION FEE (if required). Blocks 1 through 4 should be completed where appropriate. All further correspondence including the Patent, advance orders and notification of maintenance fees will be mailed to the current correspondence address as indicated unless corrected below or directed otherwise in Block 1, by (a) specifying a new correspondence address; and/or (b) indicating a separate "FEE ADDRESS" for maintenance fee notifications.

CURRENT CORRESPONDENCE ADDRESS (Note: Legibly mark-up with any corrections or use Block 1)

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01/31/2003

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WILMINGTON, DE 198992207

Note: A certificate of mailing can only be used for domestic mailings of the Fee(s) Transmittal. This certificate cannot be used for any other accompanying papers. Each additional paper, such as an assignment or formal drawing, must have its own certificate of mailing or transmission.

Certificate of Mailing or Transmission

I hereby certify that this Fee(s) Transmittal is being deposited with the United States Postal Service with sufficient postage for first class mail in an envelope addressed to the Box Issue Fee address above, or being facsimile transmitted to the USPTO, on the date indicated below.

(Depositor's name)
(Signature)
(Date)

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nonprovisional	NO	\$1300	\$0	\$1300	04/30/2003

EXAMINER	ART UNIT	CLASS-SUBCLASS
KRUSE, DAVID H	1638	800-300000

1. Change of correspondence address or indication of "Fee Address" (37 CFR 1.363).

- ☐ Change of correspondence address (or Change of Correspondence Address form PTO/SB/122) attached.
- ☐ "Fee Address" indication (or "Fee Address" Indication form PTO/SB/47; Rev 03-02 or more recent) attached. **Use of a Customer Number is required.**

2. For printing on the patent front page, list (1) the names of up to 3 registered patent attorneys or agents OR, alternatively, (2) the name of a single firm (having as a member a registered attorney or agent) and the names of up to 2 registered patent attorneys or agents. If no name is listed, no name will be printed.

1 _____
2 _____
3 _____

3. ASSIGNEE NAME AND RESIDENCE DATA TO BE PRINTED ON THE PATENT (print or type)

PLEASE NOTE: Unless an assignee is identified below, no assignee data will appear on the patent. Inclusion of assignee data is only appropriate when an assignment has been previously submitted to the USPTO or is being submitted under separate cover. Completion of this form is NOT a substitute for filing an assignment.

(A) NAME OF ASSIGNEE

(B) RESIDENCE: (CITY and STATE OR COUNTRY)

Please check the appropriate assignee category or categories (will not be printed on the patent) ☐ individual ☐ corporation or other private group entity ☐ government

4a. The following fee(s) are enclosed:

- ☐ Issue Fee
- ☐ Publication Fee
- ☐ Advance Order - # of Copies _____

4b. Payment of Fee(s):

- ☐ A check in the amount of the fee(s) is enclosed.
- ☐ Payment by credit card. Form PTO-2038 is attached.
- ☐ The Commissioner is hereby authorized by charge the required fee(s), or credit any overpayment, to Deposit Account Number _____ (enclose an extra copy of this form).

Commissioner for Patents is requested to apply the Issue Fee and Publication Fee (if any) or to re-apply any previously paid issue fee to the application identified above.

(Authorized Signature)

(Date)

NOTE: The Issue Fee and Publication Fee (if required) will not be accepted from anyone other than the applicant; a registered attorney or agent; or the assignee or other party in interest as shown by the records of the United States Patent and Trademark Office.

This collection of information is required by 37 CFR 1.311. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, Washington, D.C. 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, Washington, DC 20231.

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

TRANSMIT THIS FORM WITH FEE(S)



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7590	01/31/2003		EXAMINER	
CONNOLLY & HUTZ PO BOX 2207 WILMINGTON, DE 198992207			KRUSE, DAVID H	
			ART UNIT	PAPER NUMBER
			1638	
DATE MAILED: 01/31/2003				

Determination of Patent Term Extension under 35 U.S.C. 154 (b)
(application filed after June 7, 1995 but prior to May 29, 2000)

The patent term extension is 0 days. Any patent to issue from the above identified application will include an indication of the 0 day extension on the front page.

If a continued prosecution application (CPA) was filed in the above-identified application, the filing date that determines patent term extension is the filing date of the most recent CPA.

Applicant will be able to obtain more detailed information by accessing the Patent Application Information Retrieval (PAIR) system. (<http://pair.uspto.gov>)

Any questions regarding the patent term extension or adjustment determination should be directed to the Office of Patent Legal Administration at (703)305-1383.

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08/945,144

01/20/1998

MICHEL LEBRUN

RP/PCT

2339

7590

01/31/2003

EXAMINER

KRUSE, DAVID H

CONNOLLY & HUTZ

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ART UNIT

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DATE MAILED: 01/31/2003

Notice of Fee Increase on January 1, 2003

If a reply to a "Notice of Allowance and Fee(s) Due" is filed in the Office on or after January 1, 2003, then the amount due will be higher than that set forth in the "Notice of Allowance and Fee(s) Due" since there will be an increase in fees effective on January 1, 2003. See Revision of Patent and Trademark Fees for Fiscal Year 2003; Final Rule, 67 Fed. Reg. 70847, 70849 (November 27, 2002).

The current fee schedule is accessible from: <http://www.uspto.gov/main/howtofees.htm>.

If the issue fee paid is the amount shown on the "Notice of Allowance and Fee(s) Due," but not the correct amount in view of the fee increase, a "Notice to Pay Balance of Issue Fee" will be mailed to applicant. In order to avoid processing delays associated with mailing of a "Notice to Pay Balance of Issue Fee," if the response to the Notice of Allowance and Fee(s) due form is to be filed on or after January 1, 2003 (or mailed with a certificate of mailing on or after January 1, 2003), the issue fee paid should be the fee that is required at the time the fee is paid. If the issue fee was previously paid, and the response to the "Notice of Allowance and Fee(s) Due" includes a request to apply a previously-paid issue fee to the issue fee now due, then the difference between the issue fee amount at the time the response is filed and the previously paid issue fee should be paid. See Manual of Patent Examining Procedure, Section 1308.01 (Eighth Edition, August 2001).

Questions relating to issue and publication fee payments should be directed to the Customer Service Center of the Office of Patent Publication at (703) 305-8283.

Notice of Allowability

Application No.

08/945,144

Examiner

David H Kruse

Applicant(s)

LEBRUN ET AL.

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1638

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 9 December 2002.
2. ☒ The allowed claim(s) is/are 42-54, renumbered 1-13.
3. ☐ The drawings filed on _____ are accepted by the Examiner.
4. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).
 - * Certified copies not received: _____.
5. ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
 - (a) ☐ The translation of the foreign language provisional application has been received.
6. ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application. **THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

7. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
8. ☐ CORRECTED DRAWINGS must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No. _____.
 - (b) ☐ including changes required by the proposed drawing correction filed _____, which has been approved by the Examiner.
 - (c) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No. _____.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the top margin (not the back) of each sheet. The drawings should be filed as a separate paper with a transmittal letter addressed to the Official Draftsperson.

9. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|--|--|
| 1 <input type="checkbox"/> Notice of References Cited (PTO-892) | 2 <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3 <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 4 <input checked="" type="checkbox"/> Interview Summary (PTO-413), Paper No. <u>35</u> |
| 5 <input type="checkbox"/> Information Disclosure Statements (PTO-1449), Paper No. _____ | 6 <input checked="" type="checkbox"/> Examiner's Amendment/Comment |
| 7 <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit of Biological Material | 8 <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance |
| | 9 <input type="checkbox"/> Other |

WILLIAM H. PHILLIPS
PATENT ANALYST

W

EXAMINER'S AMENDMENT

1. An extension of time under 37 CFR § 1.136(a) is required in order to make an examiner's amendment, which places this application in condition for allowance. During a telephone conversation conducted on 8 January 2003, Robert G. McMorrow requested an extension of time for 1 MONTH(S) and authorized the Commissioner to charge Deposit Account No. 03-2775 the required fee of \$110 for this extension and authorized the following examiner's amendment. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 § CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

The application has been amended as follows:

¹ ~~42~~ (thrice amended) A modified plant DNA [nucleic acid] molecule [of plant origin] encoding a [an] modified EPSPS enzyme wherein said enzyme comprises [, the modifications comprising]:

H1 a first amino acid substitution from threonine to isoleucine at the threonine which corresponds to position 102 of the amino acid sequence of SEQ ID NO: 3 [a first modification of a coding sequence that normally encodes a threonine that is located, relative to the gene from which it is derived, at position 102 of the amino acid sequence of the mature EPSPS sequence of SEQ ID NO: 3, to encode isoleucine in a mature plant EPSPSP sequence]; and

a second amino acid substitution from proline to serine at the proline which corresponds to position 106 of the amino acid sequence of SEQ ID NO: 3 [a second

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H1
WJ
modification of a coding sequence that normally encodes a proline that is located, relative to the gene from which it is derived, at position 106 of the amino acid sequence of the mature EPSPS sequence of SEQ ID NO: 3, to encode serine in a mature plant EPSPS sequence].

H2
2
43 (twice amended) The modified plant DNA [nucleic acid] molecule as claimed in claim 42 wherein the modified plant DNA [nucleic acid] molecule is of maize origin.

At claim 45, line 4, the phrase "nucleic acid" has been replaced with -- modified plant DNA molecule --.

At claim 46, line 3, the phrase "nucleic acid of claim 42" has been replaced with the phrase -- modified plant DNA molecule --.

6
47 (thrice amended) A transformed plant cell comprising a vector comprising the following components, which are operably associated in the direction of transcription:

- H3
- (a) a promoter functional in a plant cell;
 - (b) a nucleic acid encoding a chloroplast transit peptide;
 - (c) a modified DNA [nucleic acid] molecule of maize origin encoding a [an]

modified EPSPS enzyme wherein said enzyme comprises [, the modifications comprising]:

a first amino acid substitution from threonine to isoleucine at the threonine which

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corresponds to position 102 of the amino acid sequence of SEQ ID NO: 3 [a first modification of a coding sequence that normally encodes a threonine that is located, relative to the gene from which it is derived, at position 102 of the amino acid sequence of the mature EPSPS sequence of SEQ ID NO: 3, to encode isoleucine in a mature plant EPSPSP sequence]; and

H3
cont
a second amino acid substitution from proline to serine at the proline which corresponds to position 106 of the amino acid sequence of SEQ ID NO: 3 [a second modification of a coding sequence that normally encodes a proline that is located, relative to the gene from which it is derived, at position 106 of the amino acid sequence of the mature EPSPS sequence of SEQ ID NO: 3, to encode serine in a mature plant EPSPS sequence]; and

(d) an untranslated transcription termination signal region.

At claim 48, line 1, after "monocot", -- plant cell -- has been inserted.

At claim 48, line 2, the phrase "an unmodified" has been replaced with the phrase -- a non-transformed --.

At claim 49, line 1, after "dicot", -- plant cell -- has been inserted.

At claim 49, line 2, the phrase "an unmodified" has been replaced with the phrase -- a non-transformed --.

9 50 (thrice amended) A transgenic plant comprising a vector comprising the following

H4

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components, which are operably associated in the direction of transcription:

- (a) a promoter functional in a plant cell;
- (b) a nucleic acid encoding a chloroplast transit peptide;
- (c) a modified DNA [nucleic acid] molecule of maize origin encoding a [an]

modified EPSPS enzyme wherein said enzyme comprises [, the modifications comprising]:

a first amino acid substitution from threonine to isoleucine at the threonine which corresponds to position 102 of the amino acid sequence of SEQ ID NO: 3 [a first modification of a coding sequence that normally encodes a threonine that is located, relative to the gene from which it is derived, at position 102 of the amino acid sequence of the mature EPSPS sequence of SEQ ID NO: 3, to encode isoleucine in a mature plant EPSPSP sequence]; and

a second amino acid substitution from proline to serine at the proline which corresponds to position 106 of the amino acid sequence of SEQ ID NO: 3 [a second modification of a coding sequence that normally encodes a proline that is located, relative to the gene from which it is derived, at position 106 of the amino acid sequence of the mature EPSPS sequence of SEQ ID NO: 3, to encode serine in a mature plant EPSPS sequence]; and

- (d) an untranslated transcription termination signal region.

At claim 51, line 2, the phrase "an unmodified" has been replaced with the phrase -- a non-transgenic --.

51

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At claim 52, line 2, the phrase "an unmodified" has been replaced with the phrase -- a non-transgenic --.

12
53 (thrice amended) A method for selectively controlling plants which method comprises the steps of:

a) planting crop seeds or plants which have increased glyphosate tolerance as a result of a chimeric gene being inserted into said crop seeds or plants, said chimeric gene having

(i) a promoter region functional in a plant cell; and

HS (ii) a modified plant DNA [nucleic acid] molecule [of plant origin] encoding a modified EPSPS enzyme wherein said enzyme comprises [, the modifications comprising]:

a first amino acid substitution from threonine to isoleucine at the threonine which corresponds to position 102 of the amino acid sequence of SEQ ID NO: 3 [a first modification of a coding sequence that normally encodes a threonine that is located, relative to the gene from which it is derived, at position 102 of the amino acid sequence of the mature EPSPS sequence of SEQ ID NO: 3, to encode isoleucine in a mature plant EPSPSP sequence]; and

a second amino acid substitution from proline to serine at the proline which corresponds to position 106 of the amino acid sequence of SEQ ID NO: 3 [a second modification of a coding sequence that normally encodes a proline that is located,

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relative to the gene from which it is derived, at position 106 of the amino acid sequence of the mature EPSPS sequence of SEQ ID NO: 3, to encode serine in a mature plant EPSPS sequence]; and

(iii) an untranslated transcription termination signal region; and

b) applying to said crop seeds or plants a sufficient amount of glyphosate to control [said] untransformed plants without significantly affecting said crop seeds or plants that comprise the chimeric gene.

¹³
~~54~~ (twice amended) A plant transformed with a modified DNA molecule [nucleic acid] encoding a [mature] plant EPSPS [protein of plant origin] enzyme having a first amino acid substitution from threonine to isoleucine at the threonine which corresponds to position 102 of the amino acid sequence of SEQ ID NO: 3 [having isoleucine substituted for the threonine that is relatively located at position 102 of the amino acid sequence of mature EPSPS sequence of SEQ ID NO: 3]; and

^{HS}
_{cont}
a second amino acid substitution from proline to serine at the proline which corresponds to position 106 of the amino acid sequence of SEQ ID NO: 3 [serine substituted for the proline that is relatively located at position 106 of the amino acid sequence of mature EPSPS sequence of SEQ ID NO: 3].

2. The following is an examiner's statement of reasons for allowance: The Declaration of Alan Sailland, filed 9 December 2002, has addressed the issues under 35 U.S.C. § 112, first paragraph, and the Examiner withdraws the outstanding rejections. The statement in the Sailland Declaration on page 2, section 4, provides evidence that other plant EPSPS genes were disclosed and available prior to the filing

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date of the instant application, and that the encoded enzymes were conserved in their amino acid sequences at the claimed modifications.

The Examiner has amended the claims for clarity and consistency of language, said amendments are not intended to modify the scope of the claims.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David H. Kruse, Ph.D. whose telephone number is (703) 306-4539. The examiner can normally be reached on Monday to Friday from 8:00 a.m. to 4:30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dr. Amy Nelson can be reached at (703) 306-3218. The fax telephone number for this Group is (703) 872-9306 Before Final or (703) 872-9307 After Final.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group Receptionist whose telephone number is (703) 308-0196.



AMY J. NELSON, PH.D.
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600

David H. Kruse, Ph.D.
8 January 2003

